IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SECOND DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE M.NARAYANA REDDY

WRIT PETITION NOs : 9483 of 2000 and 24946 of 2000

W.P.No.9483 of 2000

Between:

1 P.Yamuna W/o.P.Gopal Reddy
H.No.16/1638-1 Ramamoorthy Nagar,
Nellore
2 Battina Umapathi Reddy S/o.Venkata Krishna Reddy
16/1380B, Sreenivasa Agraharam Nellore
3 Mannem Vinod S/o.M.V.Krishna Reddy
H.No.3/429 Lakshmipuram
Nellore.

4. Perneti Gopal Reddy, S/o Ramana Reddy, Retd. Employee,

D.No.16/1638, Ramamoorthynagar, Nellore.

5. Iska Venkata Saibaba Reddy, S/o Venkata Subbarami Reddy,

Contractor, D.No.16/1569, Ramamoorthynagar, Nellore.

6. Putta Gopala Reddy, S/o Subbarami Reddy, Business, D.No.16/1504,

Ramamoorthynagar, Nellore.

7. Vemireddy Kota Reddy, S/o V.Siva Kota Reddy, A-Class Contractor,

D.No.16/1742, Ramamoorthynagar, Nellore.

8. Munukuru Ramachandra Reddy, S/o Dasaradharami Reddy, Advocate,

D.No.16-3/629-1, Ramamoorthynagar, Nellore.

9. Sivuni Gurumurthy Reddy, S/o Pulla Reddy, Retd.CE., APSEB,

D.No.16/1660, Ramamoorthynagar, Nellore.

10. P.Venugopal Reddy, S/o P.V.Reddy, Business, D.No.16-3/631,

Ramamoorthynagar, Nellore.

11. T.Sreehari, S/o T.Venugopaiah, Advocate, D.No.16/375-II,

S.Y.Agraharam, Ramamoorthynagar, Nellore.

12. Chennareddy Sarojinamma, W/o Ch.Sivasankar Reddy, Ex.Municipal

Councillor, D.No.16/1735, Ramamoorthynagar, Nellore.

13. Papanaidu Krupanidhi, S/o P.Sreenath, Doctor, D.No.16/2-311,

S.V.Agraharam, Ramamoorthynagar, Nellore.

14. N.Dasaradha Rami Reddy, S/o Late Sri Sesha Reddy, Contractor,

D.No.16/Plot No.2 of CAS No.287/2, Ramamoorthynagar, Nellore.

15. Dr.Samanthu Venkata Krishna Reddy, S/o Late Samanthu Raghruami

Reddy, Doctor, D.No.16/1727, Ramamoorthynagar, Nellore.

16. Puttamreddyn Ramachandra Reddy, S/o P.Rami Reddy, Lecturer in

V.R.College, D.No.16/1666, Ramamoorthynagar, Nellore.

17. Dr.Jetti Usha Rani, W/o P.V.Sesha Reddy, Doctor, D.No.16/1658-2,

Ramamoorthynagar, Nellore.

18. M.Rama Krishna Reddy, S/o M.Janaki Ram Reddy, Agriculturist,

D.No.16/1585, Ramamoorthynagar, Nellore.

(Petitioners 4 to 18 have been impleaded as per the court order dated 22-11-2004 in WPMP No.14931 of 2000)

..... PETITIONERS

AND

1 The District Collector

Nellore District, Nellore
2 The Commissioner
Nellore Municipality, Nellore
3 The Revenue Divisional Officer,
Nellore, Nellore District
4 The Mandal Revenue Officer
Nellore, Nellore District

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to pass an order or orders or writ more particularly one in the nature of writ of mandamus declaring the action of the respondents in not demarcating the 40' wide road lying parallel on the eastern side of the Railway Track, Ramamoorthy Nagar, Nellore in terms of approved plan vide GO.Ms.No.637, MA. Dt.28/11/1974 as arbitrary, illegal, ultra vires the A.P.Municipalities Act and violative of the petitioners rights guaranteed under Art.14 and 21 of the Constitution of India and consequently direct the respondents not to permit encroachments on the said public road.

Counsel for the Petitioners: Mr. C.KODANDA RAM

Counsel for the Respondent Nos.1, 3 and 4: The Govt. Pleader for Revenue

Counsel for the Respondent No.2: MR.D.Srinivas.

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WRIT PETITION NO : 24946 of 2000

Between:

1 Boina Bupaiah S/o.late Ankaiah
Pathaganigutta,Rammurthi Nagar, Nellore
2 Bosi Kantamma W/o.Ramanaia
D.No.1646 Pathaganigutta,Rammurthi Nagar, Nellore
3 Mannavarapu Raghuramaiah S/o.Ramaiah
D.NO.16/1646 Pathaganigutta,Rammurthi Nagar, Nellore
4 Penamalli Padmavathi W/o.Srinivasulu
D.No.16/1642 Pathaganigutta,Rammurthi Nagar, Nellore
5 Bellamkonda Masthanamma W/o.Ramanaiah
D.No.16/1642 Pathaganigutta,Rammurthi Nagar, Nellore
6 Yadampalli Sridevamma W/o.Venkateswarlu
D.No.16/1641 Pathaganigutta,Rammurthi Nagar, Nellore
7 Bommilla Venkamma W/o.Venkataiah
D.No.16/1651 Pathaganigutta,Rammurthi Nagar, Nellore
8 Darla Vijayamma W/o.Subrahmanyam
D.No.16/1651 Pathaganigutta,Rammurthi Nagar, Nellore

9 Darla Sujatha W/o.Venkateswarlu
Pathaganigutta,Rammurthi Nagar, Nellore
10 Pasupulate Lakshmikanthamma W/o.Krishnaiah
D.No.16/1654 Pathaganigutta,Rammurthi Nagar, Nellore
11 Chitvelu Bharati W/o.Venkataramanaiah
D.No.16/1653 Pathaganigutta,Rammurthi Nagar, Nellore
12 Muppuru Vijayamma W/o.Venkateswarlu
D.No.16/1652 Pathaganigutta,Rammurthi Nagar, Nellore
13 Dande Malaxmamma W/o.Venkateswarlu
Pathaganigutta,Rammurthi Nagar, Nellore
14 Dande Vijayamma W/o.Ramanaiah
D.No.16/1652 Pathaganigutta,Rammurthi Nagar, Nellore
15 Mupuru Ramanamma W/o.Siddaiah
Pathaganigutta,Rammurthi Nagar, Nellore
16 Chalamcharla Jayaprada W/o.Krishnaiah
Pathaganigutta,Rammurthi Nagar, Nellore
17 Badisi Rajeswaramma W/o.Ramanaiah
D.No.16/1655 Pathaganigutta,Rammurthi Nagar, Nellore
18 Badisi Sravani W/o.Janardhan
D.No.16/1655 Pathaganigutta,Rammurthi Nagar, Nellore
19 Thambi Rangamma W/o.Raghavaiah
D.No.16/1657 Pathaganigutta,Rammurthi Nagar, Nellore
20 Dande Achamma W/o.Venkataiah
Pathaganigutta,Rammurthi Nagar, Nellore
21 S.Ranemma W/o.Saravana
Pathaganigutta,Rammurthi Nagar, Nellore
22 Kollipaka Kameswaramma W/o.Ramanaiah
D.No.16/1658 Pathaganigutta,Rammurthi Nagar, Nellore
23 Chalamcharla Sudheer S/o.Ramesh
Pathaganigutta,Rammurthi Nagar, Nellore
24 Chodavaram Laxmaiah S/o.Ramaiah
D.No.16/1655 Pathaganigutta,Rammurthi Nagar, Nellore

25 Chodavaram Laxmamma W/o.Chinnaiah
Pathaganigutta,Rammurthi Nagar, Nellore
26 Atla Ramanamma W/o.Venkataratnam
Pathaganigutta,Rammurthi Nagar, Nellore
27 Pasupuleti Sarojanamma W/o.Venkaiah
D.No.16/1645 Pathaganigutta,Rammurthi Nagar, Nellore

..... PETITIONERS

AND

1 Commissioner
Nellore Municipality, Nellore
2 The District Collector, Nellore

3. P.Yamuna, W/o P.Gopal Reddy, 44 years, H.No.16/1638-1,

Ramamoorthynagar, Nellore.

(Respondent No.3 is impleaded as per court order dated 22-11-2004 in WPMP No.16701 of 2002).

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ of mandamus or any other appropriate writ or order declaring the action of the respondents in trying to evict the petitioners from their huts, preventing them to carry out repairs to their burnt houses situated at Pathaganigutta, Rammurthinagar, Nellore as illegal arbitrary and violative of Art.14,19(e) and 21 of the Constitution of India and consequently direct the respondents not to evict the petitioners from their houses and further direct the respondents to construct pucca houses as decided earlier.

Counsel for the Petitioner: Mr.K.S.Murthy for MR.B.RAVEENDRANATHA REDDY

Counsel for the Respondent No.1: MR.D.Srinivas

Counsel for the Respondent No.2: The Govt. Pleader for Revenue.

Counsel for the Respondent No.3: Mr.C.Kodandaram

The Court made the following:

ORAL ORDER: (per the Hon'ble the Chief Justice)

These two writ petitions have been taken up together for decision.

In W.P.No.9483 of 2000, prayer is made to declare the inaction on the part of the respondents in demarcating 40 ft. wide road lying parallel to the Eastern side of the railway track, Rammurthy Nagar, Nellore in terms of the approved plan in G.O.Ms.No.637 Municipal Administration Department dated 28-11-1974 as arbitrary, illegal and ultra vires the Andhra Pradesh Municipalities Act and violative of the petitioners' rights with consequential direction not to permit any encroachment on

the said road.

In W.P.No.24946 of 2000, a direction is sought by 27 individuals to declare the action of the respondents in trying to evict them from their huts and preventing them to carry out repairs to the burnt houses situated at Pathaganiguntta, Rammurthy Nagar, Nellore as illegal and consequential direction not to evict them from their houses.

The facts lie in a narrow compass. The petitioners in W.P.No.9483 of 2000 allege that in 1983, they purchased plots of land for the purpose of construction of houses in the approved layout. The land is in the heart of Nellore town and is of prime value. The plots were purchased for valuable consideration. The first petitioner is alleged to have constructed a house and is residing there, which is a corner plot and is abutting 40 ft. wide road as per the approved plan, which is parallel to the railway track and 30 ft. wide road on the Southern side. Petitioners 2 and 3 have access to their plots only through the 40 ft. wide road parallel to the railway track. It is alleged that this 40 ft. road shown in approved layout has been permitted to be encroached upon by some unlawful elements, and constructions were raised thereon. On 12th May, 2000, a fire accident occurred and all the huts got burnt. At that time, there were only 20 to 25 huts. The residents of the huts approached the local leaders for rehabilitation and certain rehabilitatory measures were also taken. But surprisingly, after the fire accident, the number of huts increased and despite the fact that the petitioners in W.P.No.9483 of 2000 had been approaching the authorities to demarcate the 40 ft. road and maintain it as such, no action has been taken. Rather, every effort was being made to regularize the encroachments. In nutshell, in W.P.No.9483 of 2000, directions have been sought for maintaining the road in question as per the approved layout, for its maintenance as an approach road to the houses of the petitioners thus to carry out their statutory duty under the provisions of the Andhra Pradesh Municipalities Act since the road vests in the Municipality for all intents and purposes.

In W.P.No.24946 of 2000 though there is no right vested in favour of the petitioners therein on any part of the land in their occupation, they claim that they are entitled to allotment of house site pattas by regularizing their encroachments.

An additional affidavit accompanied by a plan has been filed by petitioner No.16 in W.P.No.24946 of 2000. 50 plots are shown as proposed house sites. It is stated that pattas were given for plots from serial Nos.24 to 50 but pattas have not been given from serial Nos.1 to 20. The piece of land, which is the subject matter of the proposed house site pattas from serial Nos.1 to 20, in fact, is the subject matter of W.P.No.9483 of 2000.

We have heard the counsel for the parties and gone through the record. It is not disputed before us that this particular piece of land forms part of an approved layout plan and also forms part of Master Plan as approved under the provisions of the Urban Areas (Amendment) Act, 1975. So long this particular piece of land remains a part of the approved layout and of Master Plan and is not modified or amended, there is no power vested in the respondents to utilize it for any other purpose and there is no manner of doubt that the respondents are under an obligation to keep the said area free from any encroachment and to maintain it as an approach road. No directions can be issued for giving any house site pattas till then. We are informed that already a proposal has been sent by the municipal authorities to the Government for giving house site pattas and decision of the Government is awaited..

As observed by us above, the respondents are under an obligation to maintain the aforesaid piece of land as a road and for that reason, direction as prayed for in W.P.No.9483 of 2000 deserves to be issued that the respondents must ensure that all the encroachments are removed and the land in question is maintained as a road as per the approved plan. Considering the facts and circumstances of the case, as there is already a proposal pending for considering for granting house site pattas, it would be for the State Government to take appropriate decision in accordance with law. In case it is decided not to modify the Master Plan and layout plan for the land in question, the encroachments must be removed. In case the Government would like to provide house site pattas to the encroachers elsewhere, it will be for the Government to select some other land and shift them to that portion.

Therefore, we will dispose of the writ petitions with direction to the respondents that within a period of four months from the date of receipt of the writ order, they will take appropriate decision in the matter and ensure that the layout

plan and Master Plan are duly adhered to and all encroachments, if any, are removed from the portion. Within the same period, the State Government must consider the proposal of the municipal authority whether or not the Master Plan is to be modified or amended. In case, the Government decides not to amend the Master Plan, the encroachments must be removed within the period mentioned above and it will be for the respondents to act in accordance with law in demarcating and laying the approach road as per the layout plan.

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DEVINDER GUPTA, CJ

22-11-2004

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M.NARAYANA REDDY, J

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To

1 The District Collector, Nellore District, Nellore
2 The Commissioner, Nellore Municipality, Nellore
3 The Revenue Divisional Officer, Nellore, Nellore District
4 The Mandal Revenue Officer, Nellore, Nellore District.

5 2 CCs to the Govt. Pleader for Revenue, High Court Buildings,

Hyderabad (OUT).

6 2 CD copies.